

DOCKET FILE COPY ORIGINAL

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAY 20 9 27 AM '05

In the Matter of )  
)  
Rules and Regulations Implementing the )  
Controlling the Assault of Non-Solicited ) CG Docket No. 04-53  
Pornography and Marketing Act of 2003 )  
)  
Rules and Regulations Implementing the ) CG Docket No. 02-278  
Telephone Consumer Protection Act of 1991 )

**ORDER****Adopted: May 17, 2005****Released: May 18, 2005**

By the Acting Chief, Consumer &amp; Governmental Affairs Bureau:

1. On March 6, 2005, the Direct Marketing Association (DMA) and the E-Mail Service Provider Coalition (ESPC) filed a Joint Petition pursuant to section 1.3 of the Commission's rules<sup>1</sup> seeking a waiver, for a period of 90 days, of our recent rules prohibiting the sending of mobile service commercial messages (MSCMs) without the recipient's express prior authorization.<sup>2</sup> These rules were promulgated pursuant to the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, or the *CAN-SPAM Act*.<sup>3</sup> Alternatively, the Joint Petition seeks a waiver of the requirement that a sender obtain express prior authorization to send MSCMs from recipients that have affirmatively consented to receive them. According to the Joint Petition, DMA is a trade association for businesses and organizations that use a variety of marketing media, including mail, e-mail, telephone, newspapers and magazines, interactive television, and radio.<sup>4</sup> The ESPC is a group of e-mail service providers that provide volume e-mail delivery services to an estimated 250,000 clients.<sup>5</sup>

2. On May 10, 2005, DMA and ESPC filed a request to withdraw the Joint Petition.<sup>6</sup> The

<sup>1</sup> 47 C.F.R. § 1.3.

<sup>2</sup> *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*, CG Docket No. 04-53, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Joint Petition for Limited Waiver (filed Mar. 6, 2005) (Joint Petition); see also *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*, CG Docket No. 04-53, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Order, 19 FCC Rcd 15927, 15971 (2004) (*CAN-SPAM Order*), codified at 47 C.F.R. § 64.3100(a).

<sup>3</sup> Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, Pub. L. No. 108-187, 117 Stat. 2699 (2003) (*CAN-SPAM Act*), codified at 15 U.S.C. §§ 7701-7713, 18 U.S.C. § 1037, and 28 U.S.C. § 994.

<sup>4</sup> Joint Petition at 3.

<sup>5</sup> *Id.*

<sup>6</sup> *Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003*, CG Docket No. 04-53, *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Direct Marketing Association and E-Mail Service Provider Coalition Request to Withdraw their Pending Joint Petition for Limited Waiver (filed May 10, 2005) (Withdrawal Request).



request stated that a waiver of the rules was no longer necessary due to revisions to the Commission-maintained wireless domain name data base.<sup>7</sup> Because DMA and ESPC no longer seek the relief outlined in their Joint Petition, we grant their request to withdraw it.

3. Accordingly, IT IS ORDERED that, pursuant to sections 0.361 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.361 and 1.3, the Direct Marketing Association and E-Mail Service Provider Coalition Request to Withdraw Their Pending Joint Petition for Limited Waiver is GRANTED.

FEDERAL COMMUNICATIONS COMMISSION



Monica S. Desai  
Acting Chief  
Consumer & Governmental Affairs Bureau

<sup>7</sup> Withdrawal Request at 1; *see also CAN-SPAM Order*, 19 FCC Rcd at 15973, *codified at* 47 C.F.R. §§ 64.3100(e) and (f).